

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

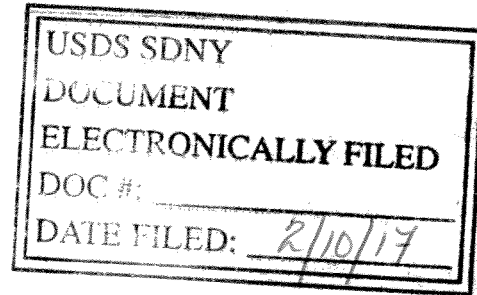
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DARRELL GIST,

Plaintiff,

v.

WARDEN MONICA RECKTENWALD; DR.
DIANE SOMMER; HSA BRYAN WALLS; PA
JAYNE VANDER HEY-WRIGHT; OPERATIONS
LIEUTENANT CARL PEARSON;
CORRECTIONAL OFFICER GEORGE HUNTER;
CORRECTIONAL OFFICER RICHARD
MCGRATH; CAPTAIN MATTHEW WHINNERY;
Estate of CORRECTIONAL OFFICER ROGER
O'MALLEY,

Defendants.
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ORDER

14 CV 6736 (VB)

Plaintiff's motion to compel discovery (Doc. #133) is DENIED.

Plaintiff's assertion that defendants and their attorneys are deliberately withholding evidence or otherwise acting in bad faith is neither plausible nor supported by any credible evidence. The record reflects that defendants have produced voluminous discovery in this case and are continuing to do so. Moreover, to the extent certain requested documents no longer exist, they cannot be produced, and the Court will not order that they be produced.

As to plaintiff's specific requests, the Court's rulings are as follows:

1. **Unit F-B logbook.** The Court accepts defense counsel's representation, based on the sworn declaration of Charles Bekgran (Doc. #143-1), that this logbook no longer exists. (Docs. #141). Since it does not exist, it cannot be produced.

2. **Protection case review staff investigation.** The Court accepts defense counsel's representation that no responsive records exist. (Doc. #141).

3. **Emails.** Based on the government representation that it is in the process of searching the BOP's central email server for emails responsive to this request, and that it will produce any such emails, subject to an assertion of privilege (Doc. #141), this request is denied. Moreover, the Court agrees there is no reasonable basis to search defendants' personal emails and home computers for responsive documents, such that this request is overbroad and unduly burdensome.

4. **Medical images.** The government has already produced documents on paper and in electronic form responsive to this request, and has represented it will produce another copy in electronic form which plaintiff will be able to access at FMC Butner. (Doc. #141).

5. **Physical examination report.** The government represents that it will produce Dr. Frazier's report when it is complete. (Doc. #141).

6. **Appointment affidavits.** The government has already produced Dr. Sommer's "appointment affidavit" and represents it will produce any other such documents relating to other defendants. (Doc. #141). If any such documents exist, the government is directed to produce them.

7. **Credential portfolios.** The government is in the process of search for such documents. (Doc. #141). If any such documents exist, the government is directed to produce them.

The next case management conference in this case remains scheduled for March 10, 2017, at 10:00 a.m.

The Clerk is instructed to terminate the motion. (Doc. #133).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Dated: February 10, 2017
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge